



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable John F. Hutchison  
County Attorney  
Lamar County  
Paris, Texas

Dear Sir:

Opinion No. 0-7480

Re: Which Articles of the Penal Code govern punishment for possession of illicit unstamped beer, distilled spirits, liquor, wine and vinous liquors, and malt liquor containing alcohol in excess of 4% by volume?

This acknowledges receipt of your letter of recent date, which reads:

"I should be very grateful if you will advise me as to whether punishment for possessing illicit unstamped liquor or beer is set out in section 41 of Article 666, Penal Code or whether the punishment for said offense is set out under section 21, sub-section 7, Article 666, Penal Code."

Article 666-3a, V.A.P.C., provides in part:

"'Alcoholic Beverage' shall mean alcohol and any beverage containing more than one half of one per cent by volume which is capable of use for beverage purposes, either alone or when diluted.

"'Illicit Beverage' shall mean and refer to any alcoholic beverage . . . possessed . . . in violation of this Act, or on which any tax imposed by the laws of this State has not been paid and the tax stamp affixed thereto; . . ."

Article 666-17, V.A.P.C., provides in part:

"(12) It shall be unlawful for any person to have in his possession . . . any illicit beverage."

Honorable John T. Hutchinson - Page 2

As to illicit unstamped beer:

Article 667-1, V.A.P.C., provides in part:

"(b) The term 'beer' means a malt beverage containing one half of one per cent or more of alcohol by volume and not more than four per cent of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer."

Article 667-23 V.A.P.C., provides in part:

"(b) Any person in possession of beer that has not been stamped in accordance with the provisions hereof shall be held to be in violation of this Article and liable for . . . the penalties for such violation."

Article 667-26, V.A.P.C., provides:

"Conviction upon criminal prosecution for any violation of this Article shall require assessment of penalty or penalties as provided in Section 41, Article 1 (Article 666) of this Act." (Words in parentheses added).

Article 666-41, V.A.P.C., provides:

"Any person who violates any provision of the Act for which a specific penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction be punished by fine of not less than \$100 and not more than \$1000, or by imprisonment in the County jail for not more than one year, or by both such fine and imprisonment."

"The term 'specific penalty' as used in this Section means and refers only to a penalty which might be imposed as a result of a criminal conviction."

Honorable John F. Hutchison - Page 3

Since we find no specific penalty for a violation of Article 667-23, it is the opinion of this department that the punishment for the possession of illicit unstamped beer is controlled by Article 666-41. See also *McChristy v. State*, 134 S. W. (2d) 295, reversed on other grounds in 145 S. W. (2d) 872.

As to illicit unstamped distilled spirits, liquor, wine and vinous liquor and malt liquor containing alcohol in excess of four per cent by weight:

Article 666-3a, V.A.P.C., provides in part:

"'Distilled Spirits' shall mean alcohol, spirits of wine, whiskey, rum, brandy, gin, and any liquor produced in whole or in part by the process of distillation, including all dilutions and mixtures thereof.

"'Liquor' shall mean any alcoholic beverage containing alcohol in excess of four per centum by weight, unless otherwise indicated.

"'Wine and vinous liquor' shall mean the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, and berries."

Article 666-21, V.A.P.C., provides in part:

"There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

"(a) A tax . . . on each gallon of distilled spirits.

"(b) A tax . . . on each gallon of vinous liquor that does not contain over fourteen per cent of alcohol by volume.

"(c) A tax . . . on each gallon of vinous liquor containing more than fourteen per cent and not more than twenty-four per cent of alcohol by volume.

"(d) A tax . . . on each gallon of artificial carbonated and natural sparkling vinous liquor.

Honorable John F. Hutchison - Page 4

"(e) A tax . . . on each gallon of vinous liquor containing alcohol in excess of four per cent by weight.

"(f) A tax . . . on each gallon of malt liquor containing alcohol in excess of four per cent by weight.

"The tax herein paid shall be paid by affixing a stamp or stamps on each bottle or container of liquor.

"Any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1000, or by imprisonment in the county jail for not less than thirty days nor more than one year."

Thus, Article 666-21 deals solely with taxes and stamps on distilled spirits, liquor, et cetera, and that Article also provides specific punishment for violation of its provisions. It is, therefore, the opinion of this department that the punishment for possession of illicit unstamped distilled spirits, liquor, wine and vinous liquor, and malt liquor containing alcohol in excess of four per cent by weight, is controlled by Article 666-21. See also *McChristy v. State*, cited supra.

We trust that the foregoing fully answers your questions.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

William E. Stapp  
William E. Stapp  
Assistant

WES:sd

